

### **REMARKS**

This responds to the Office Action dated on October 19, 2005, and the references cited therewith. By this amendment, claims 1, 7-12, 18, 21, 23 and 24 are amended, and no claims were canceled, or added. As a result, claims 1-28 are now pending in this application. Applicant requests reconsideration of this application in view of the above amendments and the following remarks.

#### **Claim Objections**

**Objection:** Claims 11, 18, and 21 were objected to due to informalities.

**Response:** Applicant has amended these claims to overcome the objections.

#### **§112 Rejection of the Claims**

**Rejection:** Claim 10 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

#### **§102 Rejection of the Claims**

**Rejection:** Claims 1-3, 6-9, 11-17, and 20-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

**Response:** Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Claim 1, as now amended, recites "...a combustion chamber; and a burn pot within the combustion chamber further comprising: a sidewall; and a plate translatable through an internal volume of the burn pot positioned between the ends of the sidewall; and a movable floor, wherein the plate is moved to form separate volumes of the burn pot." The Blotsky reference fails to disclose a combustion chamber and a separate burn pot within the combustion chamber. The Examiner contends that element 11 is the combustion chamber and that element 37 is the burn pot. (see paragraph 6 of the Office Action). It should be pointed out that the specification of the Blotsky reference refers to element 11 as a bowl and element 37 as a frusto-conical bowl member.

Applicant contends that Blotsky fails to teach a burn pot. Blotsky teaches a barbeque grill. Charcoal is placed in the bowl 11, and used to cook foodstuffs placed on the wire grill (not shown). When the user wants to discard the charcoal, the user moves plate 28 to expose openings in the bottom wall 13 of the bowl 11. The discarded charcoal then passes through the openings into the frusto-conical body 37. The charcoal fuel is not placed into the frusto-conical body 37 to produce heat. In fact, the user is through with producing heat and wants to discard the fuel when the user causes the fuel to move into the frusto-conical body 37. Therefore, the frusto-conical body 37 is not a burn pot as recited in the claim.

Even if the Examiner is successful in equating the frusto-conical body 37 of Blotsky with the burnpot of claim 1, the claim still fails to anticipate the applicant's invention. Blotsky specifically sets forth the arrangement of the elements of the barbeque grill. The frusto-conical body 37 "...is arranged below the bowl 11..." (See column 2, lines 39-40 of Blotsky). As a result, the burn pot (frusto-conical body 37 of Blotsky according to the Examiner) is not positioned within the combustion chamber (bowl 11 of Blotsky according to the Examiner). Therefore, even if the Examiner could properly equate the frusto-conical body 37 for receiving discarded fuel to the claimed burn pot, the Examiner has failed to set forth a proper *prima facie* case of anticipation since Blotsky fails to disclose each and every element of the claimed invention, arranged as in the claim.

It should also be pointed out that the Blotsky reference also fails to disclose a burn pot that includes a plate translatable through an internal volume of the burn pot positioned between the ends of the sidewall, and a movable floor, wherein the plate is moved to form

separate volumes of the burn pot. The so called burn pot (the frusto-conical body 37 of Blotsky) does not have the elements as recited in claim 1. As a result, claim 1 now overcomes the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claims 2-3, 6-9 and 11-12 depend from claim 1 and include the recitations of claim 1 by their dependency. As a result, claims 2-3, 6-9 and 11-12 also overcome the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claim 13 recites a "...burn pot comprising: a first sidewall portion; a second sidewall portion; and a translatable plate interposed between the first sidewall portion and the second sidewall portion, the translatable plate capable of at least two positions, wherein the plate has an opening therein corresponding substantially to a cross sectional area of an inside area of the first sidewall portion or the second sidewall portion." The Blotsky reference fails to disclose a translatable plate interposed between the first sidewall portion and the second sidewall portion of the burn pot. The burn pot (element 37 of Blotsky according to the Examiner) includes "...a horizontally disposed screen-like member which is suitably mounted within the body member 37..." (See column 2, lines 46-48 of the Blotsky reference). A screen-like member is not a plate as recited in claim 13. Furthermore, the screen-like member is not translatable between at least two positions. Therefore, the Examiner has failed to set forth a proper *prima facie* case of anticipation since Blotsky fails to disclose each and every element of the claimed invention, arranged as in the claim. As a result, claim 13 now overcomes the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claims 14-17 and 20-22 depend from claim 13 and include the recitations of claim 13 by their dependency. As a result, claims 14-17 and 20-22 also overcome the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claim 23 recites "...combusting a fuel in a burn pot within a combustion chamber; forming an ash column within the burn pot; and moving a translatable plate through the burn pot to remove a portion of the ash column; and moving a plate that includes a floor and an opening having a cross-sectional area at least equal to the area of the burn pot when removing a portion of the ash column." The Blotsky reference fails to disclose moving a translatable plate through the burn pot. The Blotsky reference also fails to disclose moving a plate that includes a floor and an

opening having a cross-sectional area at least equal to the area of the burn pot when removing a portion of the ash column. As mentioned above, the screen-like member is "...mounted within the body member 37..." (See column 2, lines 46-48 of the Blotsky reference) rather than being moving through the burnpot. There is also no floor associated with the translatable plate in the Blotsky reference. Therefore, there is no way one can move a plate that includes a floor. Therefore, the Examiner has failed to set forth a proper *prima facie* case of anticipation since Blotsky fails to disclose each and every element of the claimed invention, arranged as in the claim. As a result, claim 23 now overcomes the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

Claims 24-28 depend from claim 23 and include the recitations of claim 23 by their dependency. As a result, claims 24-28 also overcome the Examiner's rejection under 35 U.S.C. § 102(b) as being anticipated by Blotsky (U.S. Patent No. 3,126,881).

#### §103 Rejection of the Claims

**A. Rejection:** Claims 4, 18, 19, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Blotsky (U.S. Patent No. 3,126,881) as applied to the claims above in view of Stewart et al. (U.S. Patent No. 3,209,743).

**B. Response:** In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142 (citing *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claims 4 depends directly from claim 1. Claim 4 includes the recitations of claim 1 by its dependency. The Examiner has failed to make out a proper *prima facie* case of obviousness

since the combination of Blotsky and Stewart et al. fails to suggest all the claim limitations as set forth in claims 1 and 4. As mentioned previously, claim 1 recites "...a combustion chamber; and a burn pot within the combustion chamber further comprising: a sidewall; and a plate translatable through an internal volume of the burn pot positioned between the ends of the sidewall; and a movable floor, wherein the plate is moved to form separate volumes of the burn pot." The Blotsky reference fails to disclose a combustion chamber and a separate burn pot within the combustion chamber. The Examiner contends that element 11 of Blotsky is the combustion chamber and that element 37 is the burn pot. (see paragraph 6 of the Office Action). It should be pointed out that the specification of the Blotsky reference refers to element 11 as a bowl and element 37 as a frusto-conical bowl member. Stewart et al. has a similar structure and refers to the "burn pot" as a receptacle 23.

Applicant contends that Blotsky fails to teach or suggest a burn pot. Blotsky teaches a barbeque grill. Charcoal is placed in the bowl 11, and used to cook foodstuffs placed on the wire grill (not shown). When the user wants to discard the charcoal, the user moves plate 28 to expose openings in the bottom wall 13 of the bowl 11. The discarded charcoal then passes through the openings into the frusto-conical body 37. The charcoal fuel is not placed into the frusto-conical body 37 to produce heat. In fact, the user is through with producing heat and wants to discard the fuel when the user causes the fuel to move into the frusto-conical body 37. Therefore, the frusto-conical body 37 is not a burn pot as recited in the claim.

Applicant contends that the receptacle 23 of Stewart et al. is also not a burnpot for the same reasons as set forth above. Since neither Blotsky or Stewart et al. teach or suggest a burn pot, the combination of the two also fails to teach or suggest a burn pot.

Even if the Examiner is successful in equating the frusto-conical body 37 of Blotsky or the receptacle 23 of Stewart et al. with the burn pot of claim 1, the combination still fails to teach or suggest the applicant's invention. In both references, the frusto-conical body 37 or the receptacle 23 (Examiner's burn pot) is arranged below the bowl of the barbeque grill (the Examiner's combustion chamber). As a result, the combination of Blotsky and Stewart et al. fails to teach or suggest a burn pot positioned within the combustion chamber. Simply put, the combination of Blotsky with Stewart et al. fails to teach or suggest the elements as claimed.

It should also be pointed out that moving the burn pot (frusto-conical body 37 of Blotsky or the receptacle 23 of Stewart et al.) into the combustion chamber (such as the bowl of Blotsky) will destroy the references. In each case, charcoal and ashes are discarded by dropping the discarded materials into the frusto-conical body 37 (Blotsky) or the receptacle 23 (Stewart et al.). If the so called "burn pot" is moved into the bowl or so called "combustion chamber" the user will no longer be able to easily discard the charcoals. In addition, the burn pot would interfere with the grill. This destruction of either one or both of the references is evidence against a suggestion or a motivation, in either the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. As a result, claim 4 is not obvious in view of the combination of Blotsky (U.S. Patent No. 3,126,881) and Stewart et al. (U.S. Patent No. 3,209,743).

Claims 18, 19 and 22 depend, either directly or indirectly, from claim 13, and include the recitations of claim 13 by their dependency. The Examiner has failed to make out a proper *prima facie* case of obviousness since the Blotsky reference fails to teach or suggest all the claim limitations recited in claim 13. As discussed above, there is no teaching or suggestion of a translatable plate interposed between the first sidewall portion and the second sidewall portion of the burn pot. The burn pot (element 37 of Blotsky according to the Examiner) includes "...a horizontally disposed screen-like member which is suitably mounted within the body member 37..." (See column 2, lines 46-48 of the Blotsky reference). The screen-like member of Blotsky is not a plate as recited in claim 13. Furthermore, the screen-like member is not translatable between at least two positions. The Stewart et al. reference does not teach this member. In fact, Stewart is devoid of any member within the body member (receptacle 26 of Stewart et al.). Therefore, the Examiner has failed to set forth a proper *prima facie* case of obviousness since references the Examiner combines fail to teach or suggest all the claim limitations.

As a result of the above, claims 4, 18, 19 and 22 now overcome the Examiner's rejection under 35 U.S.C. § 103(a) as being unpatentable over Blotsky (U.S. Patent No. 3,126,881) as applied to the claims above in view of Stewart et al. (U.S. Patent No. 3,209,743).

**C. Rejection:** Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Blotsky (U.S. Patent No. 3,126,881) as applied to claim 1 above in view of Mendive et al. (U.S. Patent No. 5,582,117).

**D. Response:** In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claim 5 depends directly from claim 1. Claim 5 includes the recitations of claim 1 by its dependency. The Examiner has failed to make out a proper *prima facie* case of obviousness since the combination of Blotsky and Mendive et al. fails to suggest all the claim limitations as set forth in claims 1 and 5. As mentioned previously, claim 1 recites "...a combustion chamber; and a burn pot within the combustion chamber further comprising: a sidewall; and a plate translatable through an internal volume of the burn pot positioned between the ends of the sidewall; and a movable floor, wherein the plate is moved to form separate volumes of the burn pot." The Blotsky reference fails to disclose a combustion chamber and a separate burn pot within the combustion chamber, or a plate translatable through an internal volume of the burn pot. The Mendive et al. reference also fails to teach these elements. As a result, the combination of Blotsky and Mendive et al. falls short of the invention as claimed in claims 1 and 5. Simply put, the combination of Blotsky with Mendive et al. fails to teach or suggest all of the elements of claims 1 and 5. As a result, claim 5 is not obvious in view of the combination of Blotsky (U.S. Patent No. 3,126,881) and Mendive et al. (U.S. Patent No. 3,209,743).

Allowable Subject Matter

Claim 10 was indicated to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Claim 10 has been amended to overcome the rejections set forth in the Office Action of October 19, 2005, however, the claim has not been amended to include all of the limitations of the base claim and any intervening claims. Applicant feels that claim 1 is now in allowable form and would like to hold such an amendment in abeyance pending reconsideration by the Examiner. The indication of allowance is appreciated.



**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6977 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

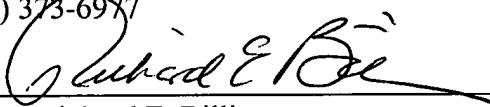
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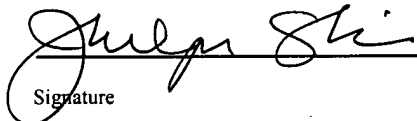
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